

REMARKS

Entry of this Amendment is respectfully requested. The instant amendment to claim 8 serves to clarify that the specified complexing agent is a complexing agent for the pyrithione in the pyrithione complex, as supported by page 14, lines 1-5 of parent provisional application Serial No. 60/141,195. The instant amendment to claim 9 serves remove “azoles” from the specified list of complexing agents recited in that claim. No new matter has been added.

It is noted at the outset that the provisionally rejection under the judicially created doctrine of obviousness-type double patenting over co-pending U.S. application Serial No. 10/325,016 given in the Office Action mailed July 22, 2003 has been withdrawn in view of the Terminal Disclaimer submitted in response thereto.

It is stated in the last paragraph at page 2 of the outstanding Office Action that the Examiner does not not find any comment certifying that “no new matter has been added” in the Amendment dated January 22, 2004. However, applicant would point out that at the middle of page 9 of that Amendment, there is a sentence “No new matter has been added.”

Regarding the phrase “free of a strong chelating agent” in claim 45, this phrase is not to be inconsistent with claims 8-10 since the absence of a strong chelating agent, although it distinguishes over the Dixon EP patent, does not preclude the presence of weak chelators. Accordingly, the 35 U.S.C. 112 rejection of claims 8, 9 and 54, as recited at the top of page 3 of the outstanding Office Action is believed to be untenable and should be withdrawn.

In the second paragraph at page 3 of the outstanding Office Action, it is stated that there is no antecedent basis for “complex” in claim 1 or “concentrate” in claim 54. Contrariwise, “concentrate” appears in claim 1, and “complex” in claim 54. Support for both terms is found in the parent provisional application Serial No. 60/141,195. In the parent provisional, “concentrate” is found in the full paragraph at page 17 of the specification. Likewise, in the parent provisional, “complex” is found at page 13, lines 23 and 24. It is clear from that disclosure that it is the pyrithione that is being complexed.

In the third paragraph at page 3 of the outstanding Office Action, it is stated that claim 9 it is indefinite as to what is being complexed by the complexing agent. It is clear from page 14, lines 1-5 of the parent provisional application that what is being complexed

is the pyrithione, and the instant amendment to claim 8, from which claim 9 depends, reflects that.

In view of the above, the outstanding rejection of claims 8, 9 and 54 under 35 U.S.C. 112 is untenable and should be withdrawn.

Claims 1, 11, 33, 34, 43, 45, 46, 48, 50, 52 and 56-58 stand rejected under 35 U.S.C. over Kaufman et al '562. This rejection is untenable and should be withdrawn. Kaufman does not disclose or suggest the instant concentrates of claim 1, and the claims depending therefrom, nor a composition that is free of thiazolinone and free of a strong chelating agent, as required by claim 45, and the claims depending therefrom. In the absence of any disclosure in favor of the instant concentrates in the relied-upon prior art, the rejection is believed to be misplaced since it appears founded in hindsight with knowledge of the present invention.

Claims 1, 8, 11, 44, 48, 54 and 58 stand rejected under 35 U.S.C. 102(b) over Dixon EP 077630. Dixon does not suggest the instant concentrates, and requires the presence of a strong chelator. Accordingly, for the reasons given above with respect to Kaufman, there is no motivation in Dixon in favor of the inventions claimed in instant claims 1 or 45, or those depending therefrom. Accordingly this rejection is untenable and should be withdrawn.

Claims 1, 8-11, 33, 34, 43-48, 50, 52, 54 and 56-58 stand rejected under 35 USC 102(b) as allegedly anticipated by Kappock. This rejection is believed to be untenable in view of the fact that the instant claims either recite composition concentrates as specified by claim 1, or require that the composition be free of a strong chelator and free of thiazolinone. The concentrates are diluted in a working fluid at a specified dilution rate of between about 1:10 and about 1:100. Kappock does not disclose or suggest the preparation of any such composition concentrates, but rather working fluids, such as paints. Illustratively, it is noted that the composition recited at column 1, lines 35-49 of Kappock requires the presence of a base medium such as a polymer latex. As another illustration, Example 1 of Kappock recites a paint wherein sodium pyrithione is added to the "mill base" and zinc oxide is added to the "pigment grind" in the process of making the paint. In other words, the paint of Kappock is fabricated in stages, with the instantly claimed components being added at different stages, e.g., mill base and pigment grind.

Kappock does not disclose or suggest any antimicrobial concentrate, but rather compositions containing a base medium, such as a polymer latex. Thus, the Kappock compositions are paints, shampoos, and the like, not antimicrobial concentrates. Further, Kappock does not disclose any range of dilutions for antimicrobial concentrates since it neither discloses nor suggests the underlying concentrates.

Claim 44 is limited to silver as the metal. Kappock neither discloses nor suggests the use of silver in patentee's composition.

Claims 33, 34 and 43-48, 50, 52, 54 and 56-58 stand rejected under 35 USC 102(b) as allegedly anticipated by Wiese. However, Wiese does not disclose or suggest any antimicrobial concentrates, much less the instantly claimed dilution range. Claim 44 has been limited to silver as the metal. Wiese neither discloses nor suggests the use of silver in patentee's composition. Further, the Abstract of Wiese speaks to the activity of a thiazolinone preservative. Accordingly, Wiese does not disclose or suggest a composition that is free of that preservative as claimed in instant claim 45. Accordingly, the rejection is untenable and should be withdrawn.

Claims 1-3, 5, 8, 9-11, 45-47 and 55 are rejected under 35 U.S.C. 102(b) over Nagata. discloses aqueous and crown ether antimicrobial compositions. It does not disclose or suggest concentrates in the context of the instantly claimed range of dilution ratios. Accordingly, this rejection is untenable and should be withdrawn. Claim 44 has been limited to silver as the metal. Dixon neither discloses nor suggests the use of silver in patentee's composition.

By this Amendment, claims 8 and 9 have been amended, and no claim have been canceled. Accordingly, claims 1, 2, 8-11, 33, 34, 43-46, 48, 50, 52, 54 and 56-58, are presented for further examination. No new matter has been added. By this Amendment, all pending claims are believed to be in condition for allowance.

Accordingly, Applicant submits that none of the references, alone or in combination, anticipate or make obvious the invention as presently claimed and that the application is now in condition for allowance. Therefore, Applicant respectfully requests reconsideration of the amended claims and an early receipt of a Notice of Allowance thereof.

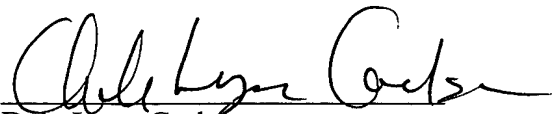
As requested in the outstanding Office Action, enclosed is an English translation of the Korean Laid-open application 1997-010124 identified in the Supplemental

Information Disclosure Statement dated January 26, 2004. The original Korean version is currently not available to Applicants.

If the Examiner has any questions or believes that a discussion with Applicant's attorney would expedite prosecution, the Examiner is invited and encouraged to contact the undersigned at the telephone number below.

Please apply any credits or charge any deficiencies to our Deposit Account No. 23-1665.

Respectfully submitted,
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